

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-13-C - ORDER NO. 2003-634
OCTOBER 22, 2003

IN RE: Application of NECC Telecom, Inc. for a)	ORDER GRANTING
Certificate of Public Convenience and)	CERTIFICATE TO
Necessity to Operate as a Reseller of)	PROVIDE
Interexchange Telecommunications)	INTEREXCHANGE
Services and for Alternative Regulation.)	SERVICES and
)	ALTERNATIVE
)	REGULATION OF ITS
)	SERVICES

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of NECC Telecom, Inc. ("NECC" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2002) and the general regulatory authority of the Commission. By its Application, NECC also requested alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and requested waiver of certain Commission regulations.

The Commission's Executive Director instructed NECC to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of NECC and of the manner and time in which to file the appropriate

pleadings for participation in the proceeding. NECC complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

A hearing was convened on June 5, 2003, at 10:30 a.m. in the Commission's Hearing Room, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. NECC was represented by Scott Elliott, Esquire. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

Serban Kevin Apostolina, Corporate Secretary of the Company, appeared and testified in support of the Application. According to the record, Mr. Apostolina has been employed by NECC since February 2002. Mr. Apostolina is responsible for conducting employment campaigns, interviewing, hiring, and processing new employees. Additionally, he is responsible for the accounts payable for the Michigan office. He also files various forms for telecommunication licensing and coordinating activities with the Company's attorneys and certified public accountants.

Mr. Apostolina explained the nature of NECC's proposed service offering within the State of South Carolina, and provided testimony regarding the Company's financial, managerial, and technical ability to provide the telecommunications services for which the Company seeks to provide.

NECC seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services to the public on a statewide basis. The Company seeks authority to offer on a resale basis within South Carolina intrastate, interLATA and, to the extent authorized by the Commission, intraLATA direct-dialed services including

“1+” service, flat rate service, 800 inbound service and travel cards. NECC seeks statewide authority to provide intraLATA services authorized by the Commission in Docket Nos. 92-182-C, 92-183-C, and 92-200-C. The Company has no plans at this time to construct any telecommunications transmission facilities of its own and seeks no construction authority. The Company will operate strictly as a reseller. NECC intends to engage in “switchless” resale; NECC will arrange for the traffic of underlying subscribers to be routed directly over the networks of the Company’s network provider.

NECC intends to utilize Global Crossing as its underlying carrier. The Company will choose its underlying carriers based upon quality of service of the carrier properly certified by the Commission to provide such service.

The Company is currently authorized to provide intrastate telecommunications services in several states including California, Connecticut, Kansas, Kentucky, Nevada, New York, Texas, and Wyoming. The testimony reveals that the Company pledges to provide and market interexchange carrier services in accordance with current Commission policies. Further, NECC will at all times provide interstate services in compliance with all FCC rules and regulations. At the time of the hearing, NECC had not provided any intrastate telecommunications services within the State of South Carolina. NECC will charge the tariffed rates approved by the Commission. The record reveals that the Company intends to market its services via direct sales by NECC’s employees and independent sales agents.

Mr. Apostolina also testified that NECC has sufficient technical, financial, and managerial resources and ability to provide the telecommunications services for which

authority is sought. The founder and President of NECC is Daniel Popa. According to the record, from 1996 until 2002, Mr. Popa was involved in telecommunication resell for different telecom carriers like Telegroup, IXC, First Communications, and World Link Telecom. Lucia T. Popa is the Company's Business Analyst and Chief Financial Officer. From April 2000 until January 2002, the record reveals that Mr. Lucia Popa worked as a telecommunication agent for different telecommunications companies including Opex, Telecom, World Link, and TeleGroup. Other personnel of NECC includes the following people: Ramona V. Cean, Operations Manager; Simona Dragan, IT Manager; Raul Turcu, IT Consultant; and Dana Urechiatu, Customer Service Manager.

In support of NECC's financial ability to provide the services sought in the Company's Application, NECC's Balance Sheet and Profit & Loss Statement for the period ending June 30, 2002, and its Balance Sheet and Profit & Loss Statement as of December 31, 2002, were filed with the Commission.

NECC requests that the Commission regulate its long distance business services, consumer card, and operator service offerings in accordance with the principles and procedures established for alternative regulation in Orders Nos. 1995-1734 and 1996-55, which has been modified by Order No. 2001-997-C and which was approved for AT&T and other similarly situated companies. The Company also requests a waiver of the requirements of 26 S.C. Regs. 103-610 which requires a carrier to keep all records required by the Commission's Rules and Regulations within the State of South Carolina. The Company's offices are in Indiana and maintaining the Company's books in South

Carolina would be unduly burdensome. NECC will have a registered agent in South Carolina and will bear any costs associated with the Commission's inspection of its books and records. Further, NECC seeks permission to maintain its books and records using Generally Accepted Accounting Principles ("GAAP") in lieu of the Uniform System of Accounts ("USOA").

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. NECC is organized as a corporation under the laws of the State of Indiana and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. NECC operates as a non-facilities based reseller of interexchange services and wishes to provide its services in South Carolina.

3. NECC has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to NECC to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS),

Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for NECC for its resale of residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. NECC shall not adjust its residential rates below the approved maximum level without notice to the Commission and to the public. NECC shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

4. With respect to NECC's business services, consumer card, and operator service offerings, the Commission adopts a relaxed regulatory scheme identical to that

granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to NECC also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider. The provisions of this Order and this modification also apply to NECC.

5. If it has not already done so by the date of issuance of this Order, NECC shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. NECC is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. NECC shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If NECC changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, NECC shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, NECC shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. NECC shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, NECC shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS." This form shall be utilized by the Company to file annual financial information with the Commission, and shall be filed by April 1st of each year. Commission gross receipts forms are due to be filed with the Commission no later than

August 31st of each year. The appropriate form is entitled “Gross Receipts Form for Utility Companies” and can be found at the Commission’s website a www.psc.state.sc.us/forms.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. NECC shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

13. At the hearing, NECC requested a waiver of Reg. 103-610, which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The record reveals that NECC’s principal headquarters will be located in Indiana, and NECC requests permission to maintain its books and records at its headquarters in that state. The Commission finds NECC’s requested waiver reasonable

and understands the difficulty presented to NECC should the waiver not be granted. The Commission therefore grants the requested waiver that NECC be allowed to maintain its books and records at its principal headquarters. However, NECC shall make available its books and records at all reasonable times upon request by the Commission or the Commission Staff, and NECC shall promptly notify the Commission if the location of its books and records changes.

14. NECC also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, NECC maintains its book of accounts in accordance with Generally Accepted Accounting Principles (GAAP). Accordingly, NECC requests an exemption from the USOA requirements. We find that utilization of GAAP provides the Commission will have a reliable means by which to evaluate NECC's operations and assess NECC's financial fitness. Therefore, we grant NECC's request to maintain its books and records using GAAP in lieu of USOA.

15. Each telecommunications company certified in South Carolina is required to file annually the Intrastate Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Acting Executive Director

(SEAL)